

OLL 84-0679

17 February 1984

CHARONO
Leg

MEMORANDUM FOR: Chief, Litigation & Legislation Division
Office of General Counsel

FROM:

[Redacted]

Legislation Division
Office of Legislative Liaison

SUBJECT: Proposed Legislation Regarding Records of
Federal Agencies

1. The Office of Management and Budget (OMB) has requested our views on the attached draft bill prepared by the General Services Administration. This bill would create administrative procedures for determining whether a document, recording, or other items created or received by the Agency, in the course of conducting its business, is a record subject to the restrictions on disposal of records contained in Chapter 33 of Title 44, USC. Please note that the bill specifically allows the archivist of the United States to inspect the files of federal agencies to determine whether items are properly classified as to their record status and to ensure the adequacy of the documentation of policies and transactions of the Federal Government.

2. Since we must respond to OMB by 1 March 1984, I would appreciate it if you would forward to me, in the near future, any comments you have on this legislation.

[Redacted]

Attachment

Distribution:

Original - Addressee

1 - OLL Chrono

1 - LEG File: GSA/NARS Access to Records

1 - DMP:Signer

1 - D/OLL

1 - DD/OLL

DMP:pap (17 Feb 84)

STAT



Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Transmitted herewith for referral to the appropriate committees is a draft bill prepared by the General Services Administration (GSA) "To amend chapter 29 of title 44, United States Code, to clarify authorities for determination of record status and adequacy of documentation."

The proposed bill provides that the Administrator of General Services will consult with the Archivist of the United States and the head of the creating Federal agency to determine whether a document, recording, or other item created or received by the agency in the course of conducting its business is a record. The bill also provides for inspection of agency files by the Archivist of the United States or his designee in order to ensure that items are properly classified as records or non-record materials and that the agency is creating and maintaining appropriate documentation of its programs.

The authority of the Administrator to determine whether an item is a record is closely associated with his other records responsibilities in chapters 21, 29, and 33 of title 44—to assist agencies with all aspects of their records management programs, to authorize disposal of records no longer needed for agency business that do not have other values warranting their continued preservation; and to accession those records determined by the Archivist of the United States to be permanently valuable. The creating agency also has a direct interest in this determination, as well as the necessary program knowledge to assist the Administrator in making the determination.

Inspection of agency files will be made in accordance with procedures negotiated between the agency and GSA's National Archives and Records Service (NARS). NARS employees engaged in the inspection will be required to have any necessary national security clearance and to abide by the same restrictions governing privacy or confidentiality of the records that apply to the agency's employees.

The bill also provides a mechanism for resolving disagreements between GSA and the agency regarding the determination of record status and/or inspection procedures. When a dispute occurs, the matter will be referred to the Office of Management and Budget for a binding decision.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of the proposed legislation to Congress.

Sincerely,

Enclosure

A BILL

To amend chapter 29 of title 44, United States Code, to clarify authorities for determination of record status and adequacy of documentation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Chapter 29 of title 44, United States Code, is amended by adding a new section 2904a as follows:

"§2904a. Determination of record status; adequacy of documentation inspections.

"(a) The Administrator of General Services, in consultation with the Archivist of the United States and the head of the Federal agency, shall determine whether an item created by a Federal agency is a record as defined in section 3301 of this title. This determination shall be binding on all Federal agencies, subject to the provisions of subsection (c).

"(b) The Archivist of the United States or his designee shall inspect files of Federal agencies to determine whether items are properly classified as to their record status and to ensure the adequacy of the documentation of the policies and transactions of the Federal Government. Employees of the National Archives and Records Service of the General Services Administration engaged in the

inspection shall have appropriate national security clearances and shall be bound by the same records restrictions as the employees of the Federal agency with respect to privacy and confidentiality.

- "(c) If the head of a Federal agency disagrees with the Administrator's determination of the record status of an item under subsection (a), or if the head of the agency and the Archivist are unable to establish mutually acceptable inspection procedures under subsection (b), the matter shall be referred to the Director of the Office of Management and Budget, whose decision shall be binding on the parties."

Sec. 2. The table of contents for chapter 29 of title 44, United States Code, is amended by adding the following entry:

"2904a. Determination of record status; adequacy of documentation inspections."